

§ 1455b. Protecting coastal waters (Section 6217)

(a) In general.

(1) Program development. Not later than 30 months after the date of the publication of final guidance under subsection (g), each State for which a management program has been approved pursuant to section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455] shall prepare and submit to the Secretary and the Administrator a Coastal Nonpoint Pollution Control Program for approval pursuant to this section. The purpose of the program shall be to develop and implement management measures for nonpoint source pollution to restore and protect coastal waters, working in close conjunction with other State and local authorities.

(2) Program coordination. A State program under this section shall be coordinated closely with State and local water quality plans and programs developed pursuant to sections 208, 303, 319, and 320 of the Federal Water Pollution Control Act (33 U.S.C. 1288, 1313, 1329, and 1330) and with State plans developed pursuant to the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.], as amended by this Act. The program shall serve as an update and expansion of the State nonpoint source management program developed under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], as the program under that section relates to land and water uses affecting coastal waters.

(b) Program contents.

Each State program under this section shall provide for the implementation, at a minimum, of management measures in conformity with the guidance published

under subsection (g), to protect coastal waters generally, and shall also contain the following:

(1) Identifying land uses. The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of--

(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes; or

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

(2) Identifying critical coastal areas. The identification of, and a continuing process for identifying, critical coastal areas adjacent to coastal waters referred to in paragraph (1)(A) and (B), within which any new land uses or substantial expansion of existing land uses shall be subject to management measures in addition to those provided for in subsection (g).

(3) Management measures. The implementation and continuing revision from time to time of additional management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that are necessary to achieve and maintain applicable water quality standards under section 303 of the Federal Water Pollution Control Act (33 U.S.C. 1313) and protect designated uses.

(4) Technical assistance. The provision of technical and other assistance to local governments and the public for implementing the measures referred to in paragraph (3), which may include assistance in developing ordinances and regulations, technical guidance, and modeling to predict and assess the

effectiveness of such measures, training, financial incentives, demonstration projects, and other innovations to protect coastal water quality and designated uses.

(5) Public participation. Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means.

(6) Administrative coordination. The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project review, memoranda of agreement, or other mechanisms.

(7) State coastal zone boundary modification. A proposal to modify the boundaries of the State coastal zone as the coastal management agency of the State determines is necessary to implement the recommendations made pursuant to subsection (e). If the coastal management agency does not have the authority to modify such boundaries, the program shall include recommendations for such modifications to the appropriate State authority.

(c) Program submission, approval, and implementation.

(1) Review and approval. Within 6 months after the date of submission by a State of a program pursuant to this section, the Secretary and the Administrator shall jointly review the program. The program shall be approved if--

(A) the Secretary determines that the portions of the program under the authority of the Secretary meet the requirements of this section and the Administrator concurs with that determination; and

(B) the Administrator determines that the portions of the program under the authority of the Administrator meet the requirements of this section and the Secretary concurs with that determination.

(2) Implementation of approved program. If the program of a State is approved in accordance with paragraph (1), the State shall implement the program, including the management measures included in the program pursuant to subsection (b), through--

(A) changes to the State plan for control of nonpoint source pollution approved under section 319 of the Federal Water Pollution Control Act [33 USC § 1329]; and

(B) changes to the State coastal zone management program developed under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as amended by this Act.

(3) **Withholding coastal management assistance.** If the Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the Secretary shall withhold for each fiscal year until such a program is submitted a portion of grants otherwise available to the State for the fiscal year under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], as follows:

(A) 10 percent for fiscal year 1996.

(B) 15 percent for fiscal year 1997.

(C) 20 percent for fiscal year 1998.

(D) 30 percent for fiscal year 1999 and each fiscal year thereafter.

The Secretary shall make amounts withheld under this paragraph available to coastal States having programs approved under this section.

(4) Withholding water pollution control assistance. If the Administrator finds that a coastal State has failed to submit an approvable program as required by this section, the Administrator shall withhold from grants available to the State under section 319 of the Federal Water Pollution Control Act [33 USC § 1329], for each fiscal year until such a program is submitted, an amount equal to a percentage of the grants awarded to the State for the preceding fiscal year under that section, as follows:

(A) For fiscal year 1996, 10 percent of the amount awarded for fiscal year 1995.

(B) For fiscal year 1997, 15 percent of the amount awarded for fiscal year 1996.

(C) For fiscal year 1998, 20 percent of the amount awarded for fiscal year 1997.

(D) For fiscal year 1999 and each fiscal year thereafter, 30 percent of the amount awarded for fiscal year 1998 or other preceding fiscal year.

The Administrator shall make amounts withheld under this paragraph available to States having programs approved pursuant to this subsection.

(d) Technical assistance.

The Secretary and the Administrator shall provide technical assistance to coastal States and local governments in developing and implementing programs under this section. Such assistance shall include--

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

- (3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to coastal States and local governments in identifying, developing, and implementing pollution control measures; and
- (4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) Inland coastal zone boundaries.

(1) Review. The Secretary, in consultation with the Administrator of the Environmental Protection Agency, shall, within 18 months after the effective date of this title, review the inland coastal zone boundary of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], and evaluate whether the State's coastal zone boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(2) Recommendation. If the Secretary, in consultation with the Administrator, finds that modifications to the inland boundaries of a State's coastal zone are necessary for that State to more effectively manage land and water uses to protect coastal waters, the Secretary, in consultation with the Administrator, shall recommend appropriate modifications in writing to the affected State.

(f) Financial assistance.

(1) In general. Upon request of a State having a program approved under section 306 of the Coastal Zone Management Act of 1972 [16 USC § 1455], the Secretary, in consultation with the Administrator, may provide grants to the State for use for developing a State program under this section.

(2) Amount. The total amount of grants to a State under this subsection shall not exceed 50 percent of the total cost to the State of developing a program under this section.

(3) State share. The State share of the cost of an activity carried out with a grant under this subsection shall be paid from amounts from non-Federal sources.

(4) Allocation. Amounts available for grants under this subsection shall be allocated among States in accordance with regulations issued pursuant to section 306(c) of the Coastal Zone Management Act of 1972 [16 USC § 1455(c)], except that the Secretary may use not more than 25 percent of amounts available for such grants to assist States which the Secretary, in consultation with the Administrator, determines are making exemplary progress in preparing a State program under this section or have extreme needs with respect to coastal water quality.

(g) Guidance for coastal nonpoint source pollution control.

(1) In general. The Administrator, in consultation with the Secretary and the Director of the United States Fish and Wildlife Service and other Federal agencies, shall publish (and periodically revise thereafter) guidance for specifying management measures for sources of nonpoint pollution in coastal waters.

(2) Content. Guidance under this subsection shall include, at a minimum--

(A) a description of a range of methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each measure;

- (B) a description of the categories and subcategories of activities and locations for which each measure may be suitable;
- (C) an identification of the individual pollutants or categories or classes of pollutants that may be controlled by the measures and the water quality effects of the measures;
- (D) quantitative estimates of the pollution reduction effects and costs of the measures;
- (E) a description of the factors which should be taken into account in adapting the measures to specific sites or locations; and
- (F) any necessary monitoring techniques to accompany the measures to assess over time the success of the measures in reducing pollution loads and improving water quality.

(3) Publication. The Administrator, in consultation with the Secretary, shall publish--

(A) proposed guidance pursuant to this subsection not later than 6 months after the date of the enactment of this Act [enacted Nov. 5, 1990]; and

(B) final guidance pursuant to this subsection not later than 18 months after such effective date.

(4) Notice and comment. The Administrator shall provide to coastal States and other interested persons an opportunity to provide written comments on proposed guidance under this subsection.

(5) Management measures. For purposes of this subsection, the term "management measures" means economically achievable measures for the control of the addition of pollutants from existing and new categories and classes of nonpoint sources of pollution, which reflect the greatest degree of pollutant

reduction achievable through the application of the best available nonpoint pollution control practices, technologies, processes, siting criteria, operating methods, or other alternatives.

(h) Authorizations of appropriations.

(1) Administrator. There is authorized to be appropriated to the Administrator for use for carrying out this section not more than \$ 1,000,000 for each of fiscal years 1992, 1993, and 1994.

(2) Secretary.

(A) Of amounts appropriated to the Secretary for a fiscal year under section 318(a)(4) of the Coastal Zone Management Act of 1972 [16 USC § 1464(a)(4)], as amended by this Act, not more than \$ 1,000,000 shall be available for use by the Secretary for carrying out this section for that fiscal year, other than for providing in the form of grants under subsection (f).

(B) There is authorized to be appropriated to the Secretary for use for providing in the form of grants under subsection (f) not more than--

- (i) \$ 6,000,000 for fiscal year 1992;
- (ii) \$ 12,000,000 for fiscal year 1993;
- (iii) \$ 12,000,000 for fiscal year 1994; and
- (iv) \$ 12,000,000 for fiscal year 1995.

(i) Definitions.

In this section--

- (1) the term "Administrator" means the Administrator of the Environmental Protection Agency;
- (2) the term "coastal State" has the meaning given the term "coastal state" under section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453);
- (3) each of the terms "coastal waters" and "coastal zone" has the meaning that term has in the Coastal Zone Management Act of 1972 [16 USC §§ 1651 et seq.];
- (4) the term "coastal management agency" means a State agency designated pursuant to section 306(d)(6) of the Coastal Zone Management Act of 1972 [16 USC § 1455(d)(6)];
- (5) the term "land use" includes a use of waters adjacent to coastal waters; and
- (6) the term "Secretary" means the Secretary of Commerce.